US 36 Mayors/Commissioners Coalition (MCC)

Boulder County

City of Boulder

City & County of Broomfield

City of Louisville

Town of Superior

City of Westminster

October 26, 2007

Docket Management System
U.S. Department of Transportation
Docket Operations, M-30
West Building Ground Floor
Room W12-140
1200 New Jersey Ave. SE
Washington, DC 20590

Re: Docket # FTA-2006-25737 – FTA's Notice of Proposed Rulemaking, Major Capital Investment Projects

To Whom It May Concern:

The U.S. 36 Mayors and Commissioners Coalition ("MCC") is an elected official coalition representing the City of Boulder, Boulder County, Town of Superior, City of Louisville, City & County of Broomfield and the City of Westminster, all local governments in the State of Colorado. The MCC was created to develop a long term, unified vision for U.S. 36 transportation improvements and to advocate for transportation funding to implement that vision.

The MCC submits the following comments on the Federal Transit Administration's ("FTA") Proposed Rule on Major Capital Investment Projects (the "Proposed Rule"), relating to FTA's New Starts and Small Starts programs, noticed in the Federal Register on August 3, 2007, (Volume 72, Number 149).

1. **Support for High Occupancy Toll Lanes in Definition of Fixed Guideway System**

The Proposed Rule, at 42 CFR § 611.5, would revise the definition of a fixed guideway system to include facilities, like high occupancy toll ("HOT") lanes, that would replicate the kind of free-flow conditions expected of a traditional fixed guideway system through pricing or other enhancements. The MCC believes that explicitly including HOT lanes in the definition is appropriate and applauds the FTA's foresight in recognizing the important benefits that congestion pricing and technology can offer to effectively manage lanes. The inclusion of HOT lanes is consistent SAFETEA-LU and FTA's January 11, 2007 statement of policy on counting HOT lane mileage as "fixed guideway miles," as well as the thoughtful reasoning from which that policy decision was derived. Furthermore, explicitly including HOT lanes in the definition is a logical extension of the explicit allowance for funding of high occupancy vehicle ("HOV") lanes already allowed by Congress in 49 U.S. § 5309(b)(4), as amended by SAFETEA-LU. A number of HOV lanes across the United States offer a good deal of unused capacity, which makes them ideal for conversion to HOT lanes for the twin purposes of managing traffic and raising revenue for operation and maintenance of the lanes. The MCC agrees that the important focus is that the HOT lanes be managed in such a way as to assure that transit is in "free flow" condition.

2. Opposition to Requirement for Barrier Separation

49 U.S. §5309(e)(10)(A), as amended by SAFETEA-LU, specifically includes a bus capital project in the definition of a "fixed guideway capital project" for Small Starts, if "a substantial portion of the project operates in a separate right-of-way dedicated for public transit use during peak house operations." Nevertheless, the Proposed Rule, at 42 CRR § 611.5, would limit this allowance by requiring the right-of-way to be "barrier-separated." The MCC opposes this requirement because it fails to recognize that there may be several methods for effectively providing a separate right-of-way for public transit, including buffer separation. Requiring barrier separation may raise construction costs and push good BRT projects outside of Small Starts qualification. Furthermore, it fails to take into account the significant challenges and expenses that barrier separation can impose on user access.

The MCC strongly urges FTA to adopt a performance-based determination of whether a separate right-of-way actually has the intended effect of speeding up bus service and providing better operating performance. For example, the "free flow" requirement for transit could be effectively managed with a buffer-separated facility. The MCC recognizes that FTA does not normally use performance standards for fixed-guideway projects, but believes that the unique needs of a bus rapid transit system require such a standard.

3. Opposition to Focus on "Potential" Phasing For Purposes of Determining Small Starts Eligibility

The Proposed Rule, at Section 611.19(b), would appear to preclude projects from Small Starts eligibility if the cost of all "potential" phases otherwise eligible for Small Starts, could exceed the Small Starts $250 million limit. By doing so, the language attempts the impossible task of foretelling the future and consequently risks disqualifying projects from Small Starts eligibility that would otherwise be of the exact scale that Congress envisioned when it created the Small Starts category. Accordingly, the language is opposed by the MCC.

While the goal of preventing New Starts eligible projects from being subdivided into Small Starts projects is entirely appropriate, the Proposed Rule goes beyond this goal by focusing on what could potentially be added to a project. Almost any Small Starts project could potentially have future phases added on that would take it beyond the $250 million limit. Consequently, the focus on "potential" future phases is misplaced. Instead, the MCC urges the FTA to simply create a requirement that projects eligible for Small Starts demonstrate a minimum operable segment that would provide independent utility.

4. Measures and Definitions

There are several important measures and definitions that the MCC requests adjustment on to accommodate Bus Rapid Transit and/or Small Starts, including the following:

- ***BRT: Definition of Corridor*** - BRT can operate effectively in different facility types ranging from barrier-separated to mixed traffic. A number of facility and program investments can give BRT a travel time advantage such as queue jump facilities, signal prioritization, enhanced stops, prepaid boarding programs and other techniques. A project ought to be able to define its corridor such that those travel time benefits can be counted and the economic development and land use in those parts of the corridor can be counted toward the effectiveness of the entire corridor operation.
- ***Ridership/Travel Time Savings at Day of Opening Versus 20-Year Projections*** – Our understanding is that Small Starts considers opening day ridership and travel time savings for determining cost-benefit. While there may be some simplicity gained in the evaluation process for such a requirement, not using 20-year projections for ridership and travel time savings penalizes projects that are being proactive and anticipating growth. The MCC requests that Small Starts projects be allowed to use ridership and travel time projections for a 20-year time horizon, rather than opening day data, since it would reward a project that is getting ahead of the congestion curve.
- ***Rewarding Local Efforts/Investment*** - Similarly, cost-benefit measures should allow for corridors or regions to take credit for investments made over time to make transit successful. For example, advanced investment in pass programs, local street system improvements, gradually building transit ridership over time, pedestrian and bicycle network investments, and other efforts that have occurred in advance of a project ought to be rewarded in the scoring of New Starts and Small Starts projects.

Thank you for your consideration of these comments.

Sincerely,

Mark R Ruzzin

Mark Ruzzin
Mayor of Boulder (on behalf of the MCC)